

REAL PROPERTY LAW SECTION
Respectfully submits the following position on:

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SB 610
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The Real Property Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Real Property Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Real Property Law Section is 3,184.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 16. The number who voted in favor to this position was 15. The number who voted opposed to this position was 0, one member abstained.

Report on Public Policy Position

Name of section:

Real Property Law Section

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Bill Number:

SB 610 (Allen) Property; other; affidavits to correct errors or omissions relating to previously recorded documents; allow. Amends 1915 PA 123 (MCL 565.451a – 565.453) by adding sec. 1d.

Position:

The Section opposes SB 610 which would create a statutory commercial real estate brokers' lien. The reasons for opposition are:

1. The proposed legislation provides for non-consensual lien which interferes with basic property rights.
2. The proposed legislation makes brokers a special preferred class of persons and provides a very extraordinary remedy of a lien against real property.
3. Brokers deal directly with owners, purchasers, landlords and tenants and have adequate remedies at law for the collection of their commissions.
4. Providing lien rights to brokers will encourage other parties dealing with real estate such as appraisers, property managers, property inspectors, lawyers, title companies, escrow agents and accountants to request similar rights.
5. Once broker's liens are granted for commercial property there will be a substantial risk that lien rights will be subsequently extended to include residential property.

6. The proposed legislation is patterned after the Construction Lien Act, but the justification for protecting artisans who create physical improvements to property does not apply to brokers.
7. The proposed legislation seeks to force parties to a transaction to close the transaction and escrow funds sufficient to satisfy a lien, even though the validity of a lien is in dispute.
8. The proposed legislation is complex, will add substantial costs, expenses, litigation, delays and disruptions to closing real estate transactions.
9. The proposed legislation will result in the filing of more documents affecting property, problems of timely discovering such documents, and will create additional underwriting risks for title insurance companies.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

[http://www.legislature.mi.gov/\(S\(k3mbqrqlnt543r55ebqe4q55\)\)/mileg.aspx?page=getObject&objectName=2009-SB-0610](http://www.legislature.mi.gov/(S(k3mbqrqlnt543r55ebqe4q55))/mileg.aspx?page=getObject&objectName=2009-SB-0610)